

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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PHILLIP E. SMITH,

**Plaintiff,**

V.

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, et al.,

### Defendants.

Case No. 2:15-cv-01011-JCM-PAL

ORDER

(Mot. Appt. Counsel – ECF Nos. 19, 27;  
Mot. for Exhibits – ECF Nos. 20, 28)

13 This matter is before the court on Plaintiff Phillip E. Smith's Motions for Appointment of  
14 Counsel (ECF Nos. 19, 27) and Motion for Court Order for Exhibits (ECF No. 20, 28). These  
15 Motions are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of  
16 the Local Rules of Practice.

## BACKGROUND

18 Mr. Smith is a pretrial detainee in custody at the Nevada Southern Detention Center, and  
19 he proceeding in this civil rights action *pro se* and *in forma pauperis* (“IFP”). On June 1, 2015,  
20 he commenced this action by filing an IFP Application (ECF No. 1) and complaint. Upon review  
21 of the complaint, the court issued a Screening Order (ECF No. 4) instructing Smith to file an  
22 amended complaint to correct certain defects in his pleading. Once he did so, *see* Am. Compl.  
23 (ECF No. 6), the court issued a second Screening Order (ECF No. 9) finding that the amended  
24 complaint stated a plausible Eighth Amendment claim for deliberate indifference to serious  
25 medical needs against Defendants officer Seymour, and Sgt. Warburton. *Id.* at 5. The Las Vegas  
26 Metropolitan Police Department (“LVMPD”) was dismissed without leave to amend because  
27 amendment would be futile. *Id.* at 6. On July 21, 2016, Defendant Seymour filed a Motion to  
28 Dismiss (ECF No. 15) the claim against him. To date, Defendant Warburton has not been served

1 with the Amended Complaint. *See* Unexecuted Summons (ECF No. 12); Notice Summons  
2 Returned Unexecuted (ECF No. 13). However, in a separate order, the court extended the time for  
3 Smith to accomplish service.

4 **DISCUSSION**

5 As a preliminary matter, the court notes that the Motions are virtually identical; thus, they  
6 are duplicate requests for relief. Additionally, Mr. Smith has previously filed a Motion for  
7 Appointment of Counsel (ECF No. 8) which the court denied. *See* June 1, 2016 Screening Order  
8 (ECF No. 9). The court cautions Smith that filing multiple motions requesting the same relief is  
9 an abusive litigation tactic that taxes the resources of the court and all of the parties to this lawsuit.  
10 Rule 11 of the Federal Rules of Civil Procedure provides that sanctions may be imposed on an  
11 unrepresented party who signs a paper that is either filed with the court for an improper purpose  
12 or is frivolous. *See Nugget Hydroelectric, L.P. v. Pacific Gas & Elec. Co.*, 981 F.2d 429, 439 (9th  
13 Cir. 1992) (upholding Rule 11 sanctions because a party's second motion to compel largely  
14 duplicated the first) (citing *Townsend v. Holman Consulting Corp.*, 929 F.3d 1358, 1362 (9th Cir.  
15 1990) (en banc)). Once a motion is filed, filing a duplicate motion will not speed up the court's  
16 review of a movant's request since motions are generally addressed in the order which they were  
17 filed. To the contrary, filing duplicate motions increases the court's workload and generally delays  
18 decision while a new round of responses and reply deadlines run. Mr. Smith is warned that  
19 continued motion practice requesting relief that has already been denied or making frivolous,  
20 unsupported requests may result in the imposition of sanctions, up to and including dismissal of  
21 this case.

22 **I. MOTIONS FOR APPOINTMENT OF COUNSEL (ECF Nos. 19, 27)**

23 Mr. Smith's current Motions for Appointment of Counsel are the second and third time he  
24 has requested the appointment of counsel. The court denied the previous motions because he did  
25 not establish exceptional circumstances exist to justify the appointment of counsel. June 1, 2016  
26 Screening Order (ECF No. 9). Smith's current Motion fails to present any change in  
27 circumstances. In fact, these Motions are virtually identical to the first motion. Plaintiff's filings  
28 demonstrate is able to communicate his complaints and what relief he is seeking. Accordingly,

1 these Motions are denied.

2 **II. MOTION FOR COURT ORDER FOR EXHIBITS (ECF No. 20, 28)**

3 In these Motions, Mr. Smith asks the court to issue an order “directing outside sources  
 4 (business partners, family etc.)” to send him six recorded albums, certain exhibits related to his  
 5 2004 Honda Accord, a disc containing crash photos, videos and pictures of his arrest, and  
 6 documents related to “the Asset Finder’s business and potential earnings.” *See* Mot. (ECF No. 28)  
 7 at 2.

8 Filing a motion with the court is not the proper procedure for requesting written discovery  
 9 materials from a party or non-parties to this action. Once the court enters a scheduling order, the  
 10 parties are permitted to engage in discovery. *See* Fed. R. Civ. P. 16; LR 16-1(b). Discovery  
 11 requests must be served *directly on opposing parties*, or non-parties who are believed to have  
 12 discoverable information. Once a party or non-party is served with a proper discovery request he  
 13 or she has 30 days to respond and an additional 3 days for mailing. *See* Fed. R. Civ. P. 34.  
 14 Discovery requests and responses should not be filed with the court. The Local Rules of Civil  
 15 Practice for this court also state:

16 Unless otherwise ordered by the Court, written discovery, including responses  
 17 thereto, and deposition transcripts, shall not be filed with the Court. Originals of  
 18 responses to written discovery requests shall be served on the party who served the  
 discovery request and that party shall make such originals available at the pretrial  
 hearing, at trial, or on order of the Court.

19 LR 26-8.

20 The court denies Smith’s Motions because they do not follow the proper discovery  
 21 procedures. If the district judge rules on the pending Motion to Dismiss (ECF No. 15) filed by  
 22 Defendant Seymore and determines that Smith has stated a plausible claim, the court will enter a  
 23 Scheduling Order allowing discovery in this case to begin. Only then may Mr. Smith serve written  
 24 discovery requests on Defendant and non-parties seeking relevant documents, information, and  
 25 evidence to support his claims. Smith should carefully review the discovery rules contained in  
 26 Rules 26–36 and 45 of the Federal Rules of Civil Procedure and the Local Rules of Practice to  
 27 ensure that he follows the appropriate procedures for both parties and non-parties to this action.

28 For the reasons explained,

1           **IT IS ORDERED:** Plaintiff Phillip E. Smith's Motions for Appointment of Counsel (ECF  
2 Nos. 19, 27) and Motion for Court Order for Exhibits (ECF No. 20, 28) are DENIED.

Dated this 26th day of October, 2016.

Peggy A. Leen  
PEGGY A. LEEN  
UNITED STATES MAGISTRATE JUDGE